

STEPHEN S. SMITH (SBN 166539)
SSmith@GreenbergGlusker.com
WILLIAM M. WALKER (SBN 145559)
WWalker@GreenbergGlusker.com
AARON J. MOSS (SBN 190625)
AMoss@GreenbergGlusker.com
GREENBERG GLUSKER FIELDS CLAMAN &
MACHTINGER LLP
1900 Avenue of the Stars, 21st Floor
Los Angeles, California 90067-4590
Telephone: 310.553.3610
Fax: 310.553.0687

Attorneys for Defendants StudiVZ Ltd., Holtzbrinck
Networks GmbH and Holtzbrinck Ventures GmbH

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

FACEBOOK, INC.,
Plaintiff,

v.

STUDIVZ LTD., VERLAGSGRUPPE
GEORG VON HOLTZBRINCK GmbH,
HOLTZBRINCK NETWORKS GmbH,
HOLTZBRINCK VENTURES GmbH, and
DOES 1-25,

Defendants.

Case No. 5:08-CV-03468 JF
Assigned To: Hon. Jeremy Fogel

**DECLARATION OF STEPHEN S. SMITH
IN SUPPORT OF STUDIVZ'S *PARTIAL*
OPPOSITION TO FACEBOOK'S MOTION
TO STAY HEARING OF MOTIONS TO
DISMISS**

[*Partial* Opposition, and Declaration of Dr.
Anton G. Maurer Filed Concurrently Herewith]

Complaint Filed: July 18, 2008

DECLARATION OF STEPHEN S. SMITH

I, Stephen S. Smith declare:

1. I am an attorney at law duly licensed to practice in the State of California and before the United States District Court for the Northern District of California, and am a partner at Greenberg Glusker Fields Claman & Machtinger LLP, counsel of record for Defendants Holtzbrinck Networks GmbH and Holtzbrinck Ventures GmbH (together, the “Holtzbrinck Defendants”) and StudiVZ Ltd. (“StudiVZ”) (collectively, “Defendants”). I have personal knowledge of the facts set forth herein and, if called as a witness, could and would testify competently thereto under oath. This declaration is submitted in support of StudiVZ’s *Partial* Opposition to Facebook’s Motion to Stay Hearing.

2. The discovery dispute that remains pending in the Magistrate Court relates to the distinct minority of personal jurisdiction-related discovery that was served on StudiVZ. The facts and argument related to that issue are set forth in detail in StudiVZ’s opposition to the motion to compel. (Docket Nos. 94 and 97). I do not repeat all of that here.

3. However, Facebook argues in its Motion to Stay that StudiVZ has not produced any “merits” discovery. That is not true. StudiVZ answered Interrogatory No. 5 and RFP No. 10, which asked for the number of users StudiVZ has that identify a California connection, which Facebook argues shows it was harmed in California. (The answer was 11,013 out of a total of over 11,768,965; i.e., less than .01%.) StudiVZ answered Interrogatory No. 13, which asked StudiVZ to describe the services that StudiVZ’s websites provide, which Facebook claims infringe its website. StudiVZ answered RFP No. 27, which asked for documents concerning any

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1 program used to extract information from any website, including Facebook.com. The answer was
2 “no documents.”

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4 I declare under penalty of perjury under the laws of the State of California and the United
5 States that the foregoing is true and correct, and that this declaration was executed in Los
6 Angeles, California on March 24, 2009.

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8 _____ /s Stephen S. Smith

9 Stephen S. Smith
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